

FILED
U.S. DISTRICT COURT

2009 JAN 28 P 2:21

DISTRICT OF UTAH

BY:

DEBRA J. FARR

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

PETER JOSE SMITH,

Plaintiff,

vs.

MERCADO LATINO

Defendant.

ORDER ADOPTING REPORT AND
RECOMMENDATION

Case No. 2:08 CV 504 TC

The court referred this case to Magistrate Judge Paul M. Warner pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B). On January 8, 2009, Judge Warner, in a very thorough Report and Recommendation, recommended that Defendant's motion to dismiss be granted and Plaintiff's complaint be dismissed.

The parties were given ten days to file objections to the Report and Recommendation and were cautioned that failure to file an objection could constitute waiver thereof upon subsequent review. No objections were filed.

The court, after de novo review of the Report and Recommendation, agrees that Judge Warner's conclusions are correct in all respects, and hereby adopts the Report and Recommendation as the order of the court. Defendant's motion to dismiss is GRANTED. Plaintiff's Complaint is DISMISSED both as a result of granting Defendant's motion to dismiss

and pursuant to the in forma pauperis statute's requirement that the court "dismiss the case at any time if the court determines that . . . the action . . . fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

IT IS SO ORDERED THIS 29th day of January, 2009.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
Chief Judge